ACA COMPLIANCE OVERVIEW

Individual Tax Credits to Trigger Employer Penalties

The Affordable Care Act (ACA) created **premium tax credits** to help eligible individuals and families purchase health insurance through an Affordable Health Insurance Exchange (Exchange). By reducing a taxpayer's out-of-pocket premium costs, the credit is designed to make coverage through an Exchange more affordable.

Even though the premium tax credit is only available to individuals, they may be significant for applicable large employers (ALEs) subject to the ACA's employer shared responsibility rules, because the employer shared responsibility penalty is triggered when a full-time employee receives a premium tax credit for coverage through an Exchange.

This ACA Overview provides detailed information on premium tax credits, including the impact that it may have for certain employers if their employees receive a premium tax credit.

LINKS AND RESOURCES

- On May 23, 2012, the Internal Revenue Service (IRS) published final regulations on various aspects of the premium tax credit, including eligibility criteria for claiming the tax credit.
- The IRS issued Publication 974, *Premium Tax Credit (PTC)*, to provide more information on the premium tax credit.
- The IRS also maintains a webpage on the premium tax credit.

Eligibility

To be eligible for the credit, a taxpayer:

- Must have household income for the year between 100 – 400% FPL;
- May not be claimed as a tax dependent of another taxpayer;
- Cannot be eligible for other minimum essential coverage; and
- Must file a joint return, if married.

Impact on Employers

The employer shared responsibility penalty is triggered when a full-time employee receives a premium tax credit.

- An employee who is not eligible for a premium tax credit may still be eligible to enroll in an Exchange QHP.
- However, this would not result in an employer shared responsibility penalty for the ALE.

ACA COMPLIANCE OVERVIEW

Overview of the Premium Tax Credit Final Regulations

The premium tax credit final regulations provide guidance on determining eligibility for the premium tax credit, calculating the premium tax credit, reconciling the credit and advance credit payments and complying with the information reporting requirements for Exchanges. To be eligible for the premium tax credit, a taxpayer:

- Must have household income for the year between 100% and 400% of the federal poverty line (FPL) for the taxpayer's family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married.
- In addition, to receive the premium assistance a taxpayer must enroll in one or more qualified health plans (QHPs) through an Exchange and the taxpayer **cannot be eligible for minimum essential coverage**.

The final regulations clarify these general eligibility criteria. For example, the final regulations provide guidance on determining family size and household income and explain that, if married taxpayers reside in separate states with different FPL guidelines, or if a taxpayer resides in states with different FPL guidelines during a year, the FPL guideline that applies is the higher one.

Overview of the Employer Shared Responsibility Rules

The employer shared responsibility rules apply to applicable large employers (ALEs), or employers with **an average of 50 or more full-time and full-time equivalent (FTE) employees**. If an ALE's health coverage does not meet certain requirements and a full-time employee receives a premium tax credit through an Exchange, the ALE may be subject to a penalty. On Feb. 12, 2014, the IRS published final regulations on the employer shared responsibility rules, which generally took effect for most ALEs beginning on Jan. 1, 2015. However, certain ALEs may have had additional time to comply (for example, ALEs with 50-99 full-time and FTE employees in 2014 and ALEs with non-calendar year plans).

The monthly employer shared responsibility penalty for ALEs whose coverage is not affordable or does not provide minimum value is equal to 1/12 of $3,000 ($250) for each full-time employee who receives a premium tax credit. However, the total monthly penalty for an ALE is limited to the total number of the company's full-time employees (minus 30), multiplied by 1/12 of $2,000. After 2014, the $3,000 penalty amount is indexed by the premium adjustment percentage for the calendar year, as follows:

$3,120 for 2015	**$3,240** for 2016	**$3,390** for 2017	**$3,480** for 2018	**$3,750** for 2019	**$3,860** for 2020	**$4,060** for 2021	**$4,120** for 2022

A separate penalty applies to ALEs not offering health coverage to substantially all full-time employees and their dependents. The ACA's monthly penalty for these ALEs is equal to the number of full-time employees (minus 30), multiplied by 1/12 of $2,000. After 2014, the $2,000 penalty amount is indexed by the premium adjustment percentage for the calendar year, as follows:

$2,080 for 2015	**$2,160** for 2016	**$2,260** for 2017	**$2,320** for 2018	**$2,500** for 2019	**$2,570** for 2020	**$2,700** for 2021	**$2,750** for 2022

ACA COMPLIANCE OVERVIEW

Minimum Essential Coverage

If a taxpayer is eligible for minimum essential coverage (MEC), he or she is ineligible for the premium tax credit.

MEC includes coverage under:

- Government-sponsored programs, such as Medicare or Medicaid; or
- Employer-sponsored plans.

Government-sponsored Coverage

An individual who meets the eligibility criteria for government-sponsored MEC must complete the administrative requirements necessary to receive benefits. An individual who fails to complete these administrative requirements by the last day of the third full calendar month following the event that established his or her eligibility for the coverage will generally be treated as eligible for government-sponsored MEC. This treatment will begin as of the first day of the fourth calendar month following the event that established his or her eligibility for the government-sponsored coverage. This rule does not apply to a veteran's health care program.

> *Example:* A taxpayer turns 65 on June 3, 2018, and becomes eligible for Medicare. The taxpayer fails to enroll in the Medicare coverage during his or her initial enrollment period. The taxpayer is treated as eligible for government-sponsored MEC as of Oct. 1, 2018, the first day of the fourth month following the event that established the taxpayer's eligibility (turning 65).

Employer-sponsored Coverage

Employees who may enroll in an employer-sponsored plan, and individuals who may enroll in the plan because of a relationship with an employee, are generally considered eligible for MEC if the plan is **affordable** and provides **minimum value**.

Employees who are eligible for MEC through an employer-sponsored plan are not eligible for the premium tax credit. This is significant because the ACA's employer shared responsibility penalty is triggered when a full-time employee receives a premium tax credit for Exchange coverage. ***An employee who is not eligible for a premium tax credit may still be eligible to enroll in a QHP through an Exchange****. However, this would not result in an employer shared responsibility penalty for the ALE.*

Affordability Determination

To determine an individual's eligibility for a tax credit, the ACA provides that employer-sponsored coverage is not considered affordable if the employee's cost for self-only coverage exceeds **9.5%** of the employee's household income for the tax year. This affordability contribution percentage is indexed for years after 2014, as follows:

- **9.56%**, for plan years beginning in 2015
- **9.66%**, for plan years beginning in 2016
- **9.86%**, for plan years beginning in 2019
- **9.69%**, for plan years beginning in 2017
- **9.56%**, for plan years beginning in 2018
- **9.86%**, for plan years beginning in 2019
- **9.78%**, for plan years beginning in 2020
- **9.83%**, for plan years beginning in 2021
- **9.61%**, for plan years beginning in 2022

Although the affordability determination for the premium tax credit is based on household income, the IRS has provided three optional safe harbor methods that ALEs can use under the employer shared responsibility rules to determine affordability using criteria other than household income. These safe harbor methods measure affordability based on an employee's **Form W-2 wages**, an employee's **rate of pay** or the **federal poverty line** (FPL) for a single individual. The IRS confirmed in Notice 2015-87 that ALEs using an affordability safe harbor **may rely on the adjusted affordability contribution percentages**.

These safe harbors apply only under the employer shared responsibility rules. Thus, for purposes of determining eligibility for the premium tax credit, the Exchange will still measure affordability of employer-sponsored coverage based on whether the employee's cost for self-only coverage does not exceed 9.5% of the employee's household income for the tax year (as adjusted each year).

An employer-sponsored plan is affordable for related individuals (that is, family members) if the portion of the annual premium the employee must pay for self-only coverage does not exceed 9.5% of the taxpayer's household income (as adjusted each year). Thus, the affordability determination for families is based on the cost of self-only coverage, not family coverage.

Employer contributions to **health savings accounts (HSAs)** do not affect the affordability of employer-sponsored coverage because HSA amounts may generally not be used to pay for health insurance premiums. In addition, the IRS addressed how **health reimbursement arrangements (HRAs)** and **wellness program incentives** are counted in determining the affordability of employer-sponsored coverage.

Amounts made newly available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year are taken into account only in determining affordability if the employee may either **use the amounts only for premiums**, or may **choose to use the amounts for either premiums or cost-sharing**.

In addition, the affordability of an employer-sponsored plan is determined by assuming that each employee fails to satisfy the wellness program's requirements, unless the wellness program is related to tobacco use. This means the affordability of a plan that charges a higher initial premium for tobacco users will be determined based on the premium charged to non-tobacco users, or tobacco users who complete the related wellness program, such as attending smoking cessation classes.

Minimum Value Determination

The ACA provides that a plan fails to provide minimum value (MV) if the plan's share of total allowed costs of benefits provided under the plan is less than **60%** of those costs. An employer may use one of the following methods to determine if its health plan provides MV:

- The MV Calculator issued by HHS;
- Design-based safe harbor checklists;
- Actuarial certification; or
- A metal level, for plans in the small group market.

In addition, the IRS provided the following additional guidance on calculating MV, including special rules for HSAs, HRAs and wellness program incentives:

- All amounts contributed by an employer for the current plan year to an HSA are taken into account in determining the plan's share of costs for purposes of MV and are treated as amounts available for first dollar coverage.

- Amounts newly made available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year count for purposes of MV in the same manner, as long as the amounts may be used only for cost-sharing and may not be used to pay insurance premiums.
- A plan's share of costs for MV purposes is determined without regard to reduced cost-sharing available under a nondiscriminatory wellness program. However, for nondiscriminatory wellness programs designed to prevent or reduce tobacco use, MV may be calculated assuming that every eligible individual satisfies the terms of the program relating to prevention or reduction of tobacco use.

On Sept. 1, 2015, the IRS issued additional proposed regulations relating to the MV standards, which provided rules for determining the MV of eligible employer-sponsored plans for purposes of the ACA's premium tax credit. Under the new proposed regulations, an eligible employer-sponsored plan provides MV only if:

- The plan's share of the total allowed costs of benefits provided to an employee is at least 60%; and
- The plan provides **substantial coverage of inpatient hospital and physician services**.

Accordingly, an employer may not rely on the MV Calculator (or any actuarial certification or valuation) to demonstrate that a plan that does not provide in-patient hospitalization or physician services (referred to as Non-Hospital/Non-Physician Services Plans) provides MV. As a result, a Non-Hospital/Non-Physician Services Plan should not be adopted for the 2015 plan year and beyond.

Employer Appeals

The federally-facilitated Exchange (FFE) includes an appeals process for employers that wish to contest an Exchange determination that the employer does not provide coverage that meets both MV and affordability standards. Through this appeals process, the employer can correct any information the Exchange received from an employee's application regarding the employer's offer of coverage. This appeal is separate from the IRS' process for determining whether an employer is liable for an employer shared responsibility penalty.

State-based Exchanges have the flexibility to implement their own appeals processes in accordance with federal standards. For Exchanges that do not establish their own process, HHS will provide an employer appeals process.